

(2021) 03 SHI CK 0017
In the High Court Of Himachal Pradesh
Case No : CR.MMO NO. 62 Of 2021

Prem Chand And Ors

APPELLANT

Vs

State Of H.P And Anr

RESPONDENT

Date of Decision : 01-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 245, 320, 482

Indian Penal Code, 1860 — Section 147, 149, 323, 451

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1), 3(2)(i)

Code Of Criminal Procedure, 1898 — Section 561A

Citation : (2021) 03 SHI CK 0017

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Anil Kumar, Ram Lal Thakur, Rajat Chauhan, Arsh Rattan

Final Decision : ?Allowed

Judgement

Anoop Chitkara, J

1. The petitioners No.1 to 7, who were arraigned as accused, on the basis of complaint made by the complainant-respondent No.2, on whose

statement the Police registered the FIR, have come up before this Court under Section 482, Code of Criminal Procedure, 1973, for quashing the

proceedings because the complainant has compromised the matter with all the accused persons-petitioners.

2. Learned counsel for the petitioners on instructions prays that the matter stands compounded in terms of the compromise deed dated 31.8.2020,

Annexure P/2. Ld. Counsel for the complainant also admits the compromise.

3. The facts relevant to decide the present petition are that on 16th August, 2020, the concerned Police Station received a complaint from 2nd

respondent Shri Kashmir Singh about petitioners No.1 to 7 inflicting beatings upon him and using derogatory language in violation of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. On such complaint, the police registered the FIR mentioned above. All the accused have filed this quashing petition on the grounds that they have compromised the matter with the complainant. They have also annexed a copy of the said compromise deed, Annexure P/2.

4. Although, the withdrawal of FIR would be through District Magistrate as a routine procedure. However, the High Court's inherent jurisdiction under Section 482 of the Cr.PC, to intervene in such kind of matter, and it is not the requirement of law that the cancellation has to be approved only through the District Magistrate. Inherent Jurisdiction of the High Court under section 482 CrPC can always be exercised, depending upon the facts and circumstances. The parties are likely to live together for a lifetime, and intervention would create a cordial environment for peaceful relations between them.

ANALYSIS:

5. On 26.2.2021 the complainant Kashmir Singh (respondent No.2) was present in person in the Court with his counsel Shri Arsh Rattan, Advocate.

He stated that he had compromised the matter with the petitioners, including petitioner No.3, Nanak Ram, who unfortunately has expired during the

pendency of the case. He had forgiven them earlier and today again in the Court and compromise deed Ex.P-2, was also executed on 31.08.2020,

which was placed on record. Now, he wanted that FIR No.105 of 2020, dated 09.08.2020, registered under Sections 451, 323 147, 149 of IPC and

Section 3(1) and 3 (2) (i) of SC and ST (Prevention of Atrocities) Act, 1989, Police Station Jhandutta, District Bilaspur, be quashed so that peace is

restored. He further stated that he is making this statement in his full conscious state of mind and without any pressure of any kind. His statement was taken on record.

6. Mr. Arsh Rattan, learned counsel for the complainant-respondent No.2 has also stated that the complainant is under no pressure or threat and had given the statement on his own free will.

7. Learned counsel for the parties have stated that the accused and the complainant are neighbours and the incident occurred due to some land

dispute, which is now settled.

8. The accused/petitioners No.1, 2 and 5 to 7 were present in the Court and they again asked forgiveness from the complainant-respondent No.2, who in the Court has forgiven all of them.

9. The following aspects would be relevant to conclude this petition: -

- a) On 26.2.2021, this Court had recorded the statement of Shri Kashmir Singh, complainant-respondent No.2, wherein he testified about the compromise with the accused-petitioners, who have prayed for quashing of FIR.
- b) The complainant has resolved all disputes with the accused.
- c) The victim and the accused have amicably settled the matter between them in terms of the compromise deed (Annexure P/2). The parties do not dispute this compromise deed.
- d) Accused were the first offenders.
- e) The rejection of compromise may also lead to ill will, and the purpose of criminal jurisprudence is reformatory in nature and to work for bringing peace and happiness in society.
- f) Even if this case is put to trial, the parties are likely to maintain the stand they have taken in this compromise, which is expected to result in the accused's acquittal.

10. Given the stand of complainant-respondent No.2, no fruitful purpose would be served by dis-allowing this petition.

STAGE OF QUASHING FIR:

11. In *Ashok Chaturvedi v Shitul H. Chanchani*, 1998(7) SCC 698, Honâ??ble Supreme Court holds that the determination of the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of framing the charge. The Court holds,

â?|. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to

appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under section 482 of the Code can be exercised.

12. In *Girish Sarwate v. State of A.P.*, 2005(1) R.C.R.(Criminal) 758, the Full Bench of Andhra Pradesh High Court observed that the High Court need not wait for completion of investigation and taking cognizance by the Magistrate.

JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:

13. The law is almost settled by larger benches judgements of Supreme Court that the offences, those are not listed as compoundable, under Section 320 CrPC, can also be compounded, and the procedure to follow would be by quashing the FIR, and consequent proceedings.

a) In *R.P. Kapur v State of Punjab*, AIR 1960 SC 866, a three-member Bench of Honâ??ble Supreme Court holds,

6. â?|. â?| ...It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been

committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, the High Court would be justified in quashing the proceedings on that ground.

Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such case, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G. Chandavarkar, AIR 1928 Bom 184, Jagat Chandra Mozumdar v. Queen Empress, ILR 26 Cal 786, Dr. Shankar Singh v. State of Punjab, 56 Pun LR 54 : (AIR 1954 Punj 193), NripendraBhusan Roy v. GobinaBandhu Majumdar, AIR 1924 Cal 1018 and Ramanathan Chettiyar v. SivaramaSubramania, ILR 47 Mad 722 : (AIR

1925 Mad 39).

b) In *Madhavrao Jiwaji Rao Scindia v Sambhajirao Chandrojirao Angre*, 1988 (1) SCC 692, a three judges' bench of the Hon'ble Supreme

Court holds: -

7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to

whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features

which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the

basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and,

therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the

special facts of a case also quash the proceeding even though it may be at a preliminary stage.

c) A three Judges bench of Hon'ble Supreme Court, in *Gian Singh v. State of Punjab*, 2012(10) SCC 303, has settled the law on quashing on

account of compromise/compounding, in the following terms:

[53]. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior

court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which

means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts

the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or

otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards

existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally

well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It

should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

Â [57]. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as

compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under

Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding

of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby

while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is

guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be

acquittal or dismissal of indictment.

[58]. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled

although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the

case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.

No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of

society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid

compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like

murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like

Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim

can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil,

mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or

the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of

the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal

proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted

and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not

exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.â??

d) In *Parbatbhai Aahir v State of Gujarat*, (2017) 9 SCC 641, a three Judges Bench of Honâ??ble Supreme Court, laid down the broad principles for

quashing of FIR, which are reproduced as follows:

16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16 (i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice.

The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16 (ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement

has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.

While compounding an offence, the power of the court is governed by the provisions of section 320 of the Code of Criminal Procedure, 1973. The

power to quash under Section 482 is attracted even if the offence is non-compoundable.

16 (iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High

Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16 (iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to

prevent an abuse of the process of any court;

16 (v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled

the dispute, revolves ultimately on the facts and circumstances of each case and

no exhaustive elaboration of principles can be formulated;

16 (vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due

regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity

cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in

nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public

interest in punishing persons for serious offences;

16 (vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute.

They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

16 (viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially

civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

16 (ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a

conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16 (x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic

well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified

in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act

complained of upon the financial or economic system will weigh in the balance.

14. In the present case, the offences are not compoundable under section 320 CrPC. Be that as it may, in the peculiar facts and circumstances, this

Court is inclined to invoke the inherent jurisdiction under section 482 CrPC to quash the FIR and all subsequent proceedings.

15. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter. Given the entirety of the

case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not suffice any fruitful purpose whatsoever.

16. In Himachal Pradesh Cricket Association v State of Himachal Pradesh, 2018 (4) Crimes 324, Honâ??ble Supreme Court holds as under: -

[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only

because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court

rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case,

once we hold that FIR needs to be quashed, order of cognizance would automatically stand vitiated.â??

17. In Shakuntala Sawhney v Kaushalya Sawhney, (1979) 3 SCR 639, at p 642, Honâ??ble Supreme Court observed that the finest hour of Justice

arises propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion.

18. Given above, because of the compromise, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of

Criminal Procedure is invoked to quash the proceedings mentioned above. The FIR mentioned above is quashed and all the consequential proceedings,

are also quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

Given above, the present petition stands allowed.